

§ 205.22

37 CFR Ch. II (7–1–10 Edition)

capacity without proper authorization under this subpart.

(d) This subpart does not apply to any legal proceeding in which:

(1) An employee is to testify regarding facts or events that are unrelated to official business; or

(2) A former employee is asked to testify as an expert on a matter in which that employee did not personally participate while at the Office so long as the former employee testifies concerning his or her personal opinion and does not purport to speak for or on behalf of the Copyright Office.

§ 205.22 Production of documents and testimony.

(a) Generally, all documents and material submitted to the Copyright Office as part of an application to register a claim to copyright are available for public inspection and copying. It is possible, therefore, to obtain those materials without use of a legal process. Anyone seeking such documents must contact the Records Research and Certification Section of the Office. 37 CFR 201.2(b)(1). Certified copies of public documents and public records are self-authenticating. FED. R. EVID. 902 and 1005; *see also*, FED. R. CIV. p. 44(a)(1). In certain specified circumstances, information contained in the in-process files may be obtained by complying with the procedures of 37 CFR 201.2(b)(3). Correspondence between a copyright claimant or his or her agent and the Copyright Office in a completed registration, recordation, or refusal to register is also available for public inspection. Section 201.2(d) of this chapter prescribes the method for requesting copies of copyright registration records. An attorney engaged in actual or prospective litigation who submits a court order or a completed Litigation Statement may obtain a copy of the deposit if his or her request is found to comply with the requirements set out in 37 CFR 201.2(d)(2). The fees associated with various document requests, searches, copies, and expedited handling are listed in 37 CFR 201.3. Other publications containing Copyright Office procedures and practices are available to the public without charge from the Copyright Office or its Web site: [http://](http://www.copyright.gov)

www.copyright.gov. The Office website also allows online searching of copyright registration information and information pertaining to documents recorded with the Copyright Office beginning January 1, 1978. Pre-1978 copyright registration information and document recordation information is available to the public in the Copyright Office during regular business hours. If the information sought to be obtained from the Office is not available through these Office services, demands and subpoenas for testimony or documents may be served as follows:

(1) *Demands for testimony or documents.* All demands, requests, subpoenas or orders for production of documents or testimony in a legal proceeding directed to the Copyright Office, the Register of Copyrights or any other Copyright Office employee in his or her official capacity must be in writing and should be served on the General Counsel of the Copyright Office as indicated in § 205.2 of this part and in accordance with the Federal Rules of Civil or Criminal Procedure.

(2) *Affidavits.* Except when the Copyright Office is a party to the legal proceeding, every demand, request or subpoena shall be accompanied by an affidavit or declaration under penalty of perjury pursuant to 28 U.S.C. 1746. Such affidavit or declaration shall contain a written statement setting forth the title of the legal proceeding; the forum; the requesting party's interest in the legal proceeding; the reasons for the demand, request, or subpoena; a showing that the desired testimony or document is not reasonably available from any published or other written source, (e.g., 37 CFR, Chapter II; Compendium II, Compendium of Copyright Office Practices; other written practices of the Office; circulars; the Copyright Office website) and is not available by other established procedure, e.g., 37 CFR 201.2, 201.3. If testimony is requested in the affidavit or declaration, it shall include the intended use of the testimony, a detailed summary of the testimony desired, and a showing that no document could be provided and used in lieu of the requested testimony. The purpose of these requirements is to permit the Copyright General Counsel to make an informed decision as to

whether testimony or production of a document should be authorized. The decision by the General Counsel will be based on consideration of the purposes set forth in §205.21(b) of this part, on the evaluation of the requesting party's need for the testimony and any other factor warranted by the circumstances. Typically, when the information requested is available through other existing Office procedures or materials, the General Counsel will not authorize production of documents or testimony.

(b) No Copyright Office employee shall give testimony concerning the official business of the Office or produce any document in a legal proceeding other than those made available by the Records Research and Certification Section under existing regulations without the prior authorization of the General Counsel. Without prior approval from the General Counsel, no Office employee shall answer inquiries from a person not employed by the Library of Congress or the Department of Justice regarding testimony or documents in connection with a demand, subpoena or order. All inquiries involving demands, subpoenas, or orders shall be directed to the Copyright General Counsel.

(c) Any Office employee who receives a demand, request, subpoena or order for testimony or the production of documents in a legal proceeding shall immediately notify the Copyright Office General Counsel at the phone number indicated in §205.2 of this part and shall immediately forward the demand to the Copyright General Counsel.

(d) The General Counsel may consult or negotiate with an attorney for a party or the party, if not represented by an attorney, to refine or limit a demand, request or subpoena to address interests or concerns of the Office. Failure of the attorney or party to cooperate in good faith under this part may serve as the basis for the General Counsel to deny authorization for the testimony or production of documents sought in the demand.

(e) A determination under this part regarding authorization to respond to a demand is not an assertion or waiver of privilege, lack of relevance, technical deficiency or any other ground for non-

compliance. The Copyright Office reserves the right to oppose any demand on any appropriate legal ground independent of any determination under this part, including but not limited to, sovereign immunity, preemption, privilege, lack of relevance, or technical deficiency.

(f) *Office procedures when an employee receives a demand or subpoena:*

(1) If the General Counsel has not acted by the return date, the employee must appear at the time and place set forth in the subpoena (unless otherwise advised by the General Counsel) and inform the court (or other legal authority) that the demand has been referred for the prompt consideration of the General Counsel and shall request the court (or other legal authority) to stay the demand pending receipt of the requested instructions.

(2) If the General Counsel makes a determination not to authorize testimony or the production of documents, but the subpoena is not withdrawn or modified and Department of Justice representation cannot be arranged, the employee should appear at the time and place set forth in the subpoena unless advised otherwise by the General Counsel. If legal counsel cannot appear on behalf of the employee, the employee should produce a copy of these rules and state that the General Counsel has advised the employee not to provide the requested testimony or to produce the requested document. If a court (or other legal authority) rules that the demand in the subpoena must be complied with, the employee shall respectfully decline to comply with the demand, citing *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

[69 FR 39334, June 30, 2004, as amended at 73 FR 37840, July 2, 2008]

§ 205.23 Scope of testimony.

(a)(1) If a Copyright Office employee is authorized to give testimony in a legal proceeding, the testimony, if otherwise proper, shall be limited to facts within the personal knowledge of the Office employee. An Office employee is prohibited from giving expert testimony, or opinion, answering hypothetical or speculative questions, or giving testimony with respect to subject matter which is privileged. If an